

In the Matter of Merchant Mariner's Document No. Z-111690-D5  
Issued to: MIGUEL MELENDEZ

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

720

MIGUEL MELENDEZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 11 September, 1953, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-111690-D5 issued to Miguel Melendez upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an oiler on board the American SS SANTA MARIA under authority of the document above described, on or about 4 September, 1953, while said vessel was at sea, he wrongfully assaulted another crew member, Daniel Ojeda, with a dangerous weapon; to wit, a piece of pipe.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence certified copies of excerpts from the Official Logbook of the SANTA MARIA and the testimony of

the person alleged to have been assaulted as well as the testimony of another eyewitness to the incident.

In defense, Appellant offered in evidence the testimony of another member of the crew. Appellant also testified under oath in his own behalf. Appellant stated that he was unable to control his temper and got the pipe after Ojeda made a particular gesture which reflected on Appellant's morals.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-111690-D5, and all other licenses and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of eighteen months - six months outright and twelve months on twelve months probation from the time of the expiration of the outright suspension.

This appeal is a plea for clemency in which Appellant states that he "lost his head" when Ojeda made an indecent movement with his arm. Appellant also states that he depends on his seagoing profession to support his four dependents. Because he has been sailing since 1930 and has no prior record, Appellant feels that the six months outright suspension should be reduced or that it should be made probationary.

Based upon my examination of the record submitted, I hereby make the following

#### *FINDINGS OF FACT*

On 4 September, 1953, Appellant was serving as an oiler on board the American SS SANTA MARIA and acting under authority of his Merchant Mariner's Document Z-111690-D5 while the ship was at sea bound for the Port of New York.

At about 1700 on this date, Appellant and Daniel Ojeda engaged in an angry dispute which included heated exchanges of verbal abuse. The altercation arose as the result of the fact that Ojeda had obtained a haircut in the ship's barber shop that afternoon at a time when Appellant had an appointment with the barber. After

Ojeda made a certain indecent gesture during the course of the argument, Appellant left the messroom and returned in a few seconds with a foot and a half length of pipe which was about three-quarters of an inch in diameter.

Appellant swung the pipe at Ojeda while he was sitting down. Ojeda ducked as he used his left arm for protection. The pipe struck Ojeda on his left forearm. Appellant was then restrained by other members of the crew who were present.

Ojeda's arm was cut and injured to the extent that he missed twelve hours of duty and was subsequently only permitted to perform light duties before the ship arrived in New York.

There is no record of prior disciplinary action having been taken against Appellant during his many years at sea.

#### *OPINION*

As stated by the Examiner, an order of revocation would ordinarily be imposed for an assault of this nature. Although Ojeda was not seriously injured, he probably would have been if he had not seen Appellant when he started to swing the pipe or if the other seamen had not prevented Appellant from striking more than one blow with the dangerous weapon.

Only Appellant's prior unblemished record and his favorable appearance before the Examiner saved the Appellant from the imposition of a much more severe order. Therefore, the order will be sustained.

#### *ORDER*

The order of the Examiner dated at New York, New York, on 11 September, 1953, is AFFIRMED.

Merlin O'Neill  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 29th day of December, 1953.

\*\*\*\*\* END OF DECISION NO. 720 \*\*\*\*\*

